

MOTOR VEHICLE DEALER BOARD
MINUTES
March 17, 2015

The regular meeting of the Dealer Board was held at the Department of Revenue offices, Lakewood, Colorado. The following persons were present:

BOARD MEMBERS:

Anthony Brownlee
Robert Endter
Michael Jorgensen
Stan Martin
Deborah Thompson
Jason Wagner

MEMBERS ABSENT:

Justin Franks
Joseph Gebhardt
Chris Hefty

**SENIOR DIRECTOR OF
ENFORCEMENT:**

Ron Kammerzell

EXECUTIVE SECRETARY:

Bruce Zulauf

LEGAL ASSISTANT:

Leland Bebee

**DEPT OF REVENUE,
AID, ENFORCEMENT
DIVISION STAFF:**

Chris Rouze
Matt Heap
Martin Kenney
John Opeka
Gloria Breeden
Cheryl Morrison
Dave Heinrich
Kaye Kopecky
Joe Scalabrini
Brenda Fredricey
Arleen Criddell-Tapanen

ATTORNEY GENERAL'S OFFICE:

Y.E. Scott

BUDGET OFFICE:

Jill Vaughn
Curtis Tremble

VISITORS:

Todd O'Connell, CIADA
Tim Jackson, CADA
Art Erwin, Christopher's Dodge World
Eric Hartsough, Dealer Services
Michael Davis McFarland, Auto Source, LLC
Michael Rogers, Midwest Fleets Lease

Michael Hogan, Intermountain Auto Sales
Eric Fruits, Heuberger Motors
Cesar Alvarado, BBT Motors
Carlos Ramirez, BBT Motors
Hamid & Veeda Murad, Impex Automotive LLC
Skye Vapey, BBT Motors

President, Jason Wagner, opened the meeting of March 17, 2015 at 9:10 a.m. Mr. Wagner turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf informed the Board there were no additions or corrections to the agenda. Messrs. Franks, Gebhardt and Hefty will not be in attendance today.

Jill Vaughn, Enforcement Business Group Budget Director, will give a status report of where the Division's budget currently stands. There will be preliminary discussions of the Board's overall concept of the health of the industry and whether present trends pose an impact to the current fee structure. The final decisions in regard to the budget and fees will be made at the April Board meeting.

The Division is currently working on the database conversion. The goal for completion is fiscal year end. Mr. Zulauf will keep the Board updated as the process moves forward.

MINUTES

The minutes of the February 17, 2015 meeting were approved unanimously with a correction to be made on page 2, last paragraph, second to last line "Executive Secretary make recommendations to the Motor Vehicle Dealer Board for appropriate fines and/or corrective action, including suspension of business."

DEALER HANDLING FEE – ADVERTISING

Mr. Zulauf presented the Board with a draft of the memorandum to be distributed to all dealers in the state regarding Dealer Handling Fee Advertising. The memorandum will also be posted on the website.

There was a general discussion of D&H advertising. Mr. Zulauf reminded the Board that Tammi McCoy of CADA is in the process of creating a "Best Practices" guidebook for dealers, which will include proper handling of D&H advertising.

Ms. Thompson made a motion to accept the memorandum as is – passed unanimously (Rescinded).

Mr. Martin made a motion to accept the memorandum with signatures of all present Board members – passed unanimously.

LEGISLATIVE UPDATE

HB15 -1089 – Registration of Kei Vehicle For Use on the Public Roadways – Mr. Zulauf gave the Board a general update on the status of this proposed legislation.

BUDGET REPORT

Ms. Vaughn presented the Cash Flow Analysis for fiscal year end 2015. The Division's Cash Flow Analysis reflects the financial position of the Auto Industry Division as of month ended February 2015 provided all projections hold true. Total expenditures in the amount of \$3.3M equal actual expenses through February and projected fund activity for the remainder of the year. The end of the year fund balance for FY15 is projected to exceed the Division need by \$287,000. The Division expenditure projections are continually adjusted to reflect budget cuts, restrictions and increased costs as required by the Department of Revenue and the Governor's office.

Each year fees are analyzed based on projected Division need as demonstrated by the year's Budget request. Dealer Board fee recommendations are presented to the Executive Director's office for approval and implementation. Per statute §24-75-402(g), the target fund reserve should be under 16.5% of the amount expended from the cash fund during the fiscal year. Spending authority for fiscal year 2016 has decreased from the current year by \$68,000.

There was a general discussion among Board members in regard to the budget, fees and business perceptions for the industry in the coming year.

Mr. Zulauf, Mr. Wagner and Mr. Jorgensen gave recommendations for budget scenarios and possible fee adjustments to be presented by Ms. Vaughn and Mr. Tremble at the April 21, 2015 meeting.

Mr. Kammerzell informed the Board that legislation has been introduced which would allow the state Controller to freeze spending authority funds of cash-funded Agencies which have exceeded the 16.5% target fund limit for three (3) consecutive years by the dollar amount they surpassed.

The Board took a 10 minute break.

ATTORNEY GENERAL'S REPORT

Ms. Y.E. Scott presented the following to the Board:

- **Proposed Stipulation and Final Agency Order – Impex Automotive LLC Motor Vehicle Dealer License #41617** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

BACKGROUND INVESTIGATIONS TEAM

John Opeka presented the following to the Board:

Dealer Applications:

- **BBT Motors Auto Sale LLC #43190** – Motion to grant the license – approved unanimously.
- **Do it Right Motors LLC #43165** – Motion to deny the license based on failure to complete the application – approved unanimously.
- **Jambo Motors LLC #43170** – Motion to deny the license based on failure to complete the application and unfitness of financial character – approved unanimously.

Salesperson Applications:

- **Darsey, John #188918** – Motion to table for 30 days for additional information – approved unanimously.
- **McFarland, Michael Davis #172753** – Motion to grant the license – approved unanimously.
- **Elsapas, Dale #155380** – Motion to grant the license – approved unanimously.
- **Fruits, Eric #176469** – Motion to grant the license – approved unanimously.
- **Hogan, Michael #27554** – Motion to grant the license – approved unanimously.
- **Rogers, Michael #161819** – Motion to table for 30 days for additional information – approved unanimously.

EXECUTIVE SECRETARY'S REPORT

Mr. Zulauf presented the following to the Board:

1. **Proposed Stipulation and Final Agency Order – Credit Union Auto Buying Service, Inc., Dealer #39117** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.
2. **Proposed Stipulation and Final Agency Order – AutoNation Chrysler Dodge Jeep Ram Southwest, Dealer #41510** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

Mr. Brownlee left the meeting.

3. **Proposed Stipulation and Final Agency Order – Spradley Ford Lincoln, Inc., Dealer #40230** – Motion to investigate salesperson – approved unanimously (Mr. Wagner as Chairperson voted). Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously (Mr. Wagner as Chairperson voted).
4. **Proposed Stipulation and Final Agency Order – Coachworks Auto, Inc., Dealer #8824** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously (Mr. Wagner as Chairperson voted).
5. **Proposed Stipulation and Final Agency Order – Larry H. Miller Kia Lakewood, Dealer #41178** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously (Mr. Wagner as Chairperson voted).
6. **Proposed Stipulation and Final Agency Order – Tynan's Nissan, Inc., Dealer #57** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously (Mr. Wagner as Chairperson voted).

7. **Proposed Stipulation and Final Agency Order – Dave Solon Kia, Dealer #39614** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously (Mr. Wagner as Chairperson voted).
8. **Proposed Stipulation and Final Agency Order – Kuni Lexus of Greenwood Village, Dealer #40283** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously (Mr. Wagner as Chairperson voted).

Ms. Scott recused herself and left the room.

9. Initial Decision – Jones, Timothy, J. --- License# 21142

Motion was made to table for 30 days so Conflicts Counsel can review and advise the Board at the next meeting – approved unanimously (Mr. Wagner as Chairperson voted).

10. Initial Decision – Auto Resource, LLC --- License# 40095

Motion was made to accept the Findings of Fact and Conclusions of Law and modify the recommendation of the Hearing Officer and revoke the license with an explicit finding of fraud – approved unanimously (Mr. Wagner as Chairperson voted).

Ms. Scott returned to the room.

INVESTIGATION REPORT

Chief of Investigations Chris Rouze presented the following to the Board:

Statistical Reporting – Ms. Rouze informed the Board that we started with 388 cases, 176 new cases were opened and 146 cases were closed for the month, giving the Division a balance of 418 open cases. There were 305 background inquiries performed.

Affidavits of Probable Cause:

- **Jambo Auto Sales, LLP, DL #41376** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Jambo Auto Sales, LLP, Dealer #41376; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously (Mr. Wagner as Chairperson voted).
- **Lakeside Auto Brokers, Inc., DL #4837** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Lakeside Auto Brokers, Inc., Dealer #4837; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously (Mr. Wagner as Chairperson voted).

- **Magnum Motors of Loveland, LLC, DL #38660** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Magnum Motors of Loveland, LLC, Dealer #38660; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously (Mr. Wagner as Chairperson voted).
- **United Automotive, LLC, DL #40895** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to United Automotive, LLC, Dealer #40895; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.

Ms. Scott recused herself and left the room.

- **Rods Cars, Inc., DL #8062** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Rods Cars, Inc., DL #40895; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.

Ms. Scott returned to the room.

New Business – There will be no Hearings or Rulemaking on March 26, 2015. There may be Hearings held on Thursday, April 23, 2015.

Public Comment – No Public Comment

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 12:35 p.m.

(Note: The Minutes of the Motor Vehicle Dealer Board summarize the contents of the meeting. They are not verbatim transcripts and are based principally upon the digital recording of the meeting and upon the later collaboration of staff attendees to ensure that the summary faithfully captures the matters before the Board and the actions the Board took. The digital recording of the meeting is a permanent record of the Board, retained in the electronic filing system of the Auto Industry Division, and is available as a resource for review, as needed.)

Bruce Zulauf
Executive Secretary